

RECORDING REQUESTED BY:

County of San Luis Obispo

AND WHEN RECORDED MAIL TO:

Director of Planning and Building
County of San Luis Obispo
County Government Center, Room 300
San Luis Obispo, CA 93408

APN 090-136-005

AGREEMENT TO DEFER CONSTRUCTION PERMIT FEES/
COVENANTS AFFECTING REAL PROPERTY

THIS AGREEMENT is made and entered into this 12 day of September, 2016, by and between Michael Peachey, hereinafter referred to as "Owner," and the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California acting by and through its Director of the Department of Planning and Building, hereinafter referred to as "County."

WITNESSETH:

WHEREAS, on January 16, 2015, the Department of Building and Planning Hearing Officer approved Minor Use Permit DRC2014-00014, authorizing the construction of six (6) 721 square foot, 2 bedroom, 1/12 bath townhouses as rental units (hereinafter referred to as "Project").

Whereas, the Project is an affordable by design housing project located within the County of San Luis Obispo at 164 Mallagh Street, Nipomo California, and described more particularly in Exhibit A hereto (hereinafter referred to as "Property"); and

WHEREAS, Owner is required by San Luis Obispo County Department of Planning and Building fee ordinance to pay fees for the processing of construction permits for the Project; and

WHEREAS, on June 21, 2016, pursuant to San Luis Obispo County Code Section 22.70.050, Owner appealed the imposition of the construction permit processing fees to the Board of Supervisors and requested a waiver of the fees; and

WHEREAS, the Board of Supervisors partially upheld the Owner's appeal and authorized deferral of the construction permit processing fees for so long as the units remained affordable and a waiver of appeal fees; and

WHEREAS, in connection with such authorization, this agreement is intended to ensure the continued affordability of the residential units.

NOW, THEREFORE, in consideration of the County authorizing deferral of the construction permit processing fees and of the mutual promises, covenants and conditions herein contained, the parties hereto do hereby agree as follows:

1. Total Fee Balance. The County shall calculate the total construction permit processing fee amount otherwise due for each permit requiring such a fee pursuant to the fee schedule in effect as of the date the permit is issued (hereinafter referred to as the "Total Fee Balance"). As new construction permits are issued for the Project, the Total Fee Balance shall be increased accordingly, pursuant to the fee schedule in effect as of the date each permit is issued. The County shall notify Owner in writing of the Total Fee Balance prior to issuance of each construction permit. Payment of the Total

Fee Balance shall be deferred and forgiven in accordance with the terms and conditions of this Agreement.

2. Deferral of the Total Fee Balance. The Total Fee Balance shall be deferred and no payment shall be due as long as the six (6) rental units developed as part of the Project (hereinafter referred to as the "Six Rental Units") remain affordable for a period of thirty (30) years from the date of initial occupancy of any of the Six Rental Units.

3. Forgiveness of Total Fee Balance. The Total Fee Balance shall be forgiven at a rate of 3.5% per year for each year that the Owner provides County verification that the Six Rental Units remain affordable, as provided in Sections 4 and 6 below. If the Six Rental Units remain affordable for the thirty (30) year affordability term required by Sections 2 and 5 infra, the Total Fee Balance shall be forgiven by County in its entirety.

4. Affordable residential rental units. The Owner shall rent the Six Rental Units located on the Property to persons and families of extremely low, very low, low, or moderate income, as those terms are defined in Health and Safety Code section 50093. The maximum rental amount shall be set in accordance with Health and Safety Code section 50053 and as shown in the San Luis Obispo County Affordable Housing Standards bulletin, as updated periodically. The current maximum rents for a two-bedroom unit are as follows:

<u>Unit Size</u>	<u>Extremely Low Income</u>	<u>Very Low Income</u>	<u>Low Income</u>	<u>Moderate Income</u>
2	\$521	\$868	\$1,041	\$2,603

5. Continued availability of affordable rental units. The Six Rental Units shall remain affordable for a continuous period of thirty (30) years following the date of initial

occupancy. Provided, however, this Agreement may be terminated earlier pursuant to Section 7 or Section 11 below.

6. Verification by County of Continued Affordability. Following the date of initial occupancy for each of the Six Rental Units, and at each new occupancy thereafter, Owner shall submit to County a copy of the lease for each unit demonstrating a total rental amount not exceeding those described in Section 4 above.

7. Violation of Continued Affordability Provision. If Owner fails to provide verification of continued affordability in accordance with Section 6, or fails to offer the Six Rental Units at an affordable rate, as defined in Section 4, the Total Fee Balance, minus any amounts forgiven pursuant to Section 3 above, shall become due upon demand by County. Upon payment of the demanded amount, this Agreement shall be terminated and County shall record a release of this Agreement on the Property.

8. Minimum Rental Term. Owner shall not rent any of the Six Rental Units for a period of less than thirty (30) days.

9. Covenant running with the land. This Agreement shall be deemed an equitable servitude and a covenant running with the land as defined in California Civil Code section 1460. Pursuant to Civil Code section 1468 which governs such covenants, the provisions of this Agreement shall be binding upon all parties having any right, title, or interest in the Property described herein or any portion thereof, and on their heirs, successors in interest and assigns for a period of thirty (30) years as provided in Section 2 above, unless terminated earlier pursuant to the provisions of Section 7 or Section 11.

10. Interest Waived. County waives interest on the Total Fee Balance between the date this Agreement becomes effective and the date the Total Fee Balance paid or forgiven in full, whichever occurs sooner. Provided, however, if Applicant fails to timely pay the Total Fee Balance upon demand by County pursuant to Section 7 above, then interest shall be deemed to have accrued from the effective date of this Agreement until the date the Total Fee Balance is paid in full, at the rate earned by the Treasurer of the County of San Luis Obispo on the investment of pooled funds.

11. Termination Upon Repayment. This Agreement shall terminate upon full payment of the Total Fee Balance, minus any amounts forgiven pursuant to Section 3 above. Upon payment of this amount, the County shall record a release of this Agreement on the Property.

12. No Waiver or Deferral of Other Fees. Nothing herein shall relieve Owner from the obligation to pay fees not specifically addressed herein which may become due in accordance with the provisions of County ordinances.

13. Violation of Agreement. Owner understands that violation of any provision of this Agreement may result in the Total Fee Balance becoming immediately due and may result in an enforcement action against the Project.

14. Notice of Sale. The Owner shall provide written notification to the County of the opening of any escrow for the sale of the Property and shall either:

(1) Provide in the escrow instructions that the Total Fee Balance, minus any amount forgiven pursuant to Section 3 above, shall be paid to the County, as

determined by the County in writing, from the sale proceeds in escrow prior to disbursing proceeds to the seller; or

(2) Disclose to any successor-in-interest prior to transfer of the Property the obligations and restrictions contained within this Agreement, which shall be binding on said successor-in-interest pursuant to Section 9 above.

15. Notices. Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid.

To the County: Department of Planning and Building
County of San Luis Obispo
County Government Center, Room 300
San Luis Obispo, CA 93408

To the Owner: Michael Peachey
330 South Halcyon Road
Arroyo Grande, California 93420

Either party may change such address by notice in writing to the other party. Thereafter, notices shall be addressed and transmitted to the new address.

16. Effect of waiver. County's waiver of the breach of any one term, covenant, or provision of this agreement, shall not be a waiver of a subsequent breach of the same term, covenant, or provision of this agreement or of the breach of any other term, covenant, or provision of this agreement.

17. Enforceability. If any term, covenant, condition or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or

unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

18. Entire agreement and modifications. This Agreement sets forth the full and entire understanding of the parties regarding the matter set forth herein, and any other prior or existing understandings or agreements by the parties, whether formal or informal, regarding any matters are hereby superseded or terminated in their entirety. No changes, amendments, or alterations to the provisions of this Agreement shall be effective unless in writing and signed by the parties hereto or their assigns and successors in interest.

19. Agreement to be recorded. Owner and County intend and consent to the recordation of this Agreement in the office of the County Recorder of the County of San Luis Obispo, and such recordation of this agreement shall serve as constructive notice of the obligations contained herein to be performed by Owner and his successors or assigns.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

OWNER



MICHAEL PEACHEY*

COUNTY OF SAN LUIS OBISPO

By: _____
JAMES A. BERGMAN*
Director of Planning and Building

[*NOTE: This agreement will be recorded. All signatures to this agreement must be acknowledged by a notary.]

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: _____
Deputy County Counsel

Dated: _____

EXHIBIT A
Legal Description

STATE OF CALIFORNIA)
)
COUNTY OF SAN LUIS OBISPO) ss.

Signature _____
Signature of Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF SAN LUIS OBISPO) ss.

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